IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.141 OF 1988.

Vithal Chimaraya Gawade
R/o.Gawadewadi, Kandalgaon,
Taluka South Solapur,
District : Solapur ..Appellant
(Original Accused)

versus

The State of Maharashtra ..Respondent.

Mr.J.D. Mane for the Appellant

Mr. V.B.Konde Deshmukh P.P for the State

Coram : D.G.Deshpande,
S.R.Sathe, JJ.
Dated : 20th April, 2007

JUDGMENT (PER S.R.SATHE, J.)

1. Appellant, the original accused, in Sessions Case No.109 of 1987 has preferred this appeal against the judgment and order passed by the Court of the 4th Additional Sessions Judge, Solapur whereby the accused was convicted for the offence punishable under Section 302 of I.P.C. and sentenced to suffer imprisonment for life and fine of Rs.2000/- i.d. to suffer rigorous imprisonment for one year.

2. Brief facts giving rise to this appeal are as under:

. Rangnath Amruta Jadhav, deceased in the instant case and his brother Tukaram were residing at village Kandalgaon along with their parents. Accused Vitthal Chimadya Gawada is having his land near Gawadewadi, Kandalgaon. Prosecution witnesses Nos.5, 6 and 8 namely Krishna Shivram Gawade, Tukaram Kole and Laxman Gawade are also residents of Gawadewadi, Kandalgaon. All these persons were knowing each other for several years prior to the incident which took place on 23.1.1987.

3. On 23.1.1987 P.W.5 Krishna wanted to go to village Mandrup as it was a bazaar day of village Mandrup. He, therefore, went to the house of deceased Rangnath and asked him to provide his bicycle. However, Rangnath also wanted to go to market at Mandrup. Hence both of them went to village Mandrup at about 10.00 a.m. P.W.6 Tukaram as well as Vithal had also gone to village Mandrup for selling their vegetables. After selling the vegetables in the market, in the evening P.W.5 Krishna, P.W.6 Tukaram, accused Vitthal, deceased

Rangnath and P.W.8 Laxman gathered at the S.T. Stand. It was decided between them that accused Vithal should give liquor party. He was to spent for liquor while, P.W.6 Tukaram was to pay for Chiwada. Hence all of them except P.W.8 Laxman went to liquor shop. After consuming liquor all of them returned to S.t.Stand and then they also ate Chiwada, then again they decided to visit the liquor shop and to have more liquor. So, again they went there. At that time Laxman also accompanied them and they in fact took out Rs.20/- from Laxman to satisfy the liquor bill. However, they were in need of Rs.8/-. For that purpose Tukaram put his hand in the pocket of Chatan of accused to find out money. However, at that time he found that there was knife in his pocket. Tukaram told accordingly to others. Finally, all of them returned to S.T.Stand and then they started returning to their village. The bicycle of the accused Rangnath was with P.W.5 Krishna, he and Namdeo went ahead. Thereafter Rangnath took the bicycle from Tukaram and started proceeding. However, he fell from the bicycle near Kastyachi Vihir. Thereafter Tukaram took the bicycle and went away and accused Vitthal, deceased Ranganath and Laxman started proceeding towards the

village. At that time Rangnath uttered some abusive words in Kannadi language. As a result of the same accused Vitthal got annoyed and there was some exchange of words between the accused and deceased and then accused Vitthal immediately took out knife from his pocket and gave blows with knife on the chest and stomach of Rangnath. As a result of which he fell on the ground. Seeing this incident Laxman got afraid and started running away from the place, but accused chased him and caught him and gave a threat that he would finish him if he would disclose about the incident to anyone. On so saying, the accused ran away from the said placed through the field. Laxman also went running to his house.

4. On the next day morning, P.W.4 Ashok Pandhare, the Police Patil of the village came to know that some dead body is lying near Mandrup. He, therefore, went there and saw the dead body and then reported the matter to the police. On the basis of the same, police reported accidental death and police constable Ingale started inquiry about the said death.

5. Police then drew the inquest panchanama of

the dead body and sent the dead body for postmortem. The police also attached chappal from the place where the dead body was lying. When the police received the certificate from the medical officer that the death of Rangnath is homicidal, police head constable Ingale filed complaint Exhibit 28 and it registered as C.R.No.1 of 1987 for the offence punishable under Section 302 of I.P.C.

6. The investigating Officer, PSI Mane recorded statements of witnesses. During investigation it transpired that Rangnath was murdered by accused Vitthal Gawade. Police, therefore searched for the accused. However, he was not traced. However, on 29.1.1987 PSI received copy of the application made by the accused Vitthal for anticipatory bail. The said application was rejected on 5.2.1987 and on that very day police arrested him. When the accused was in the police custody he made a statement before the police that he would produce the blood stained clothes which were on his person at the time of incident as well as the knife concealed by him and accordingly police drew the memorandum in presence of the panchas and then the accused led the police and panchas to his house and he produced one knife

which was concealed in the heap of fodder. Police also attached the clothes produced by the accused. The attached articles were then sent to C.A. After completion of the investigation police submitted chargesheet against the accused for the offence punishable under Section 302 of I.p.C. and Section 37(1) r/w.135 of the B.P.Act in the Court of the Chief Judicial Magistrate, Solapur.

5. Finding that the accused was chargesheeted for the offence which was exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate committed the case to the Sessions Court, Solapur.

6. The 4th Additional Sessions Judge, Solapur, framed charge Exhibit 2 against the accused for the offences mentioned above. The charge was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried. From the suggestions put to prosecution witneses and from the statement of the accused recorded under Section 313 Cr.P.C. it appears that the defence of the accused is that there was some dispute between him and grandfather of P.W.8 on account of boundary of the

field and hence he was falsely implicated in the case.

7. In order to bring home the guilt of the accused, the prosecution examined as many as 14 witnesses consisting of P.W.1 Yeshwant Kore- Exhibit 10 who acted as panch for inquest panchanama, P.W.2 another panch Rudrappa Sitasawant-Exhibit 13, P.W.3 panch witness Sopan Waghmare-Exhibit 14, P.W.4. Police Patil Ashok Pandhare-Exhibit 15, P.W.5 Krishna Gawade -Exhibit 17, P.W.6 Tukaram Kole - Exhibit 20, P.W.7 Dr. Subhashchandra Sardar-Exhibit 22, P.W.8 Laxman Gawade, eye witness to the incident -Exhbit 24, P.W.9. wife of the deceased namely Mangala Jadhav-Exhibit 25, P.W.10 Anil Sangamwar, Police Head Constable who recorded the complaint of police patil, P.W.11 Police head constable Devidas Ingale who carried out the inquiry of the A.D, P.W.12 police head constable Narayan Jadhav-Exhibit 31, P.W.13 PSI Dhanraj Chavan and another PSI namely P.W.14 Parshuram Mane-Exhibit 34. The prosecution also produced certain documents such as inquest panchanama Exhibit 11, panchanama of the place of offence exhibit 12, report made by the police patil Exhibit 16, post-mortem notes Exhibit 23, complaint

filed by Devidas Ingale Exhibit 28, C.A. report exhibit 39, the panchanama regarding discovery of knife Exhibit 36 and attachment of clothes Exhibit 37.

8. The accused did not examine any witness in defence.

9. After considering the evidence on record the learned Addl. Sessions Judge came to the conclusion that the prosecution has proved beyond reasonable doubt that the accused committed murder of Rangnath. He, therefore, passed the above mentioned order of conviction and sentence.

10. Being aggrieved by the above mentioned order the accused has filed the present appeal. In this appeal before us Shri J.D. Mane, learned Advocate for the accused has urged only three points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly relied on the uncorroborated testimony of the single witness. Secondly, he canvassed before us that the learned trial Judge ought to have taken into appreciation the fact that

the conduct of the alleged eye witness Laxman was most unnatural and there were several contradictions in his evidence. So, his evidence should have been disbelieved. Lastly, the learned advocate for the accused submitted that prosecution has not adduced any evidence to prove the motive, so under such circumstances, the learned trial Judge ought to have held that there was no sufficient evidence to prove beyond reasonable doubt that the accused committed murder of Rangnath. He, therefore, submitted that the appeal be allowed and the accused be acquitted. As against this, the learned APP Shri V.B.Konde Deshmukh supported the judgment and order passed by the learned trial Judge and submitted that the evidence of witness Laxman is quite trustworthy.

11. It is not in dispute that deceased Rangnath, accused Vitthal and the material prosecution witnesses namely P.W.5 Krishna Gawade, P.W.6 Tukaram Gawade, P.W.8 Laxman Gawade are the residents of Kandalgaon and were known to each other for several years prior to the incident. It is also not disputed that on 23.1.1987 the above mentioned persons had gone to village Mandrup as it was Bazaar day. It also appears that the evidence of

prosecution that the above mentioned persons except Laxman were addicted to drinking. It is also not in dispute that dead body of Rangnath was noticed by the police patil Pandhare near from Mandrup by the side of the field on 24.1.1987 in the morning and then he filed report to that effect to the police. Admittedly, police head constable Devidas Ingale visited the place of offence and he drew the Inquest Panchanama Exhibit 11 and then sent the dead body for post mortem.

12. Dr. Subhashchandra Sardar Exhibit 22 has stated that he carried out the post mortem on the dead body on 24.1.2007 at about 3.30 p.m. and at that time he found following 19 external injuries as mentioned in Column No.17 of the post mortem report.

1) Incised wound on right ear lobule 1/2" margin clean cut, regular skin deep gapping present.

2) Below above wound incised wound on Rt. cheek margin clean cut, regular skin deep 1/2" gapping.

3) Rt. Side on angle of mandible 1/2" incised wound margin clean cut, regular gapping present.

4) In the middle of rt. side of neck 1/2" incised wound margin clean cut, regular muscle deep gapping present.

5) Stab wound infront of neck in the upper part 1/2" elliptical gapping present, margin clean cut, regular.

6) Incised wound on Rt. shoulder, margin clean cut, regular muscle deep 1/2" gapping present.

7) Incised wound on lateral; side of left shoulder 1/2" margin clean cut, regular muscle deep gapping present.

8) On left upper arm lateral circle just above elbow joint 1/2" incised margin clean cut, regular, muscle deep, gapping present.

10) Stab wound on rt. side of chest 5" below the right nipple in the inter costal space, candy deep 1/2", margin clean cut regular, gapping present.

11) 2"below above wound just above last rib stab wound 1/2" cavity deep, ellepitical margin clean cut regular, gapping present.

12) On abdomen left side of umbilicus 1" away from umbilicus, incised wound margin clean cut regular, muscle deep gapping present.

13) Stab wound on left side 2" away from left nipple 1/2" cavity deep, gapping present margin clean cut regular.

14) Stab wound on back near left iliac creast 1/2" muscle deep, margin clean cut, regular gapping present elliplical.

15) 4" away from above wound in the center of back obliquely situated stab wound in the center of back obliquely situated

stab wound, 1/2" margin, clean cut regular gapping present muscle deep elliptical.

16) 3" from above wound tab wound on Rt. side obliquely situated margin clean cut regular, gapping present muscle deep, elliptical.

17) On lateral side of right buttocks stab wound 1/2" margin clean cut regular gapping present elliptical.

18) Abrasion on lateral side of right knee joint 1" X 1" brown colour.

19) Contusion on right temporal region 2 X 1 round.

20 Abrasion on left elbow joint 1/2" x 1/2" brown colour.

13. Dr. Sardar has stated that the above mentioned injuries were anti mortem and the cause of death was shock and haemorrhage due to extra dural

subdural haeemotomae compressing the brain and injury to liver and lungs. Thus, from the nature of injuries also it is very clear that the death of Rangnath is homicidal. In fact it was also not the defence of the accused that the death of Rangnath is not homicidal.

14. The main and the material question is whether the death of Rangnath was caused at the hands of accused. In order to prove the same though prosecution has examined several witneses, it must be said that most of the witneses are on the point that on that day the accused as well as the deceased and the said witnesses had consumed liquor and at that time there was knife in the pocket of the chhatan which was on the person of the accused and thereafter they had started proceeding to their village in the evening. However, P.W.8 Laxman Ishwar Gawade is the only eye witness to the incident because according to the prosecution case, rest of the persons who had initially started with the accused, deceased and Laxman from Mandrup had gone ahead.

15. P.W.5 Krishna Gawade, has stated that on

23.1.1987 he and deceased Rangnath had gone to Mandrup Bazaar at about 10.00 a.m. He has also stated that in the evening Vitthal gave liquor party. It was agreed that Tukaram should pay for Chiwada and accordingly they had such party and after they returned to S.T.Stand again there was idea to visit the liquor shop second time and hence all of them again went to liquor shop. He has also stated that at that time there was some question about the payment of the second bill and some amount was short. Hence, Tukaram i.e. P.W.6 put his hand in the pocket of the chatan of accused Vithal and at that time he found that there was a knife in the pocket of Vitthal. The evidence of Krishna is important only from the point to show that at the relevant time accused was having a knife with him. His evidence also helps the prosecution to show that after the liquor party all of them had started on foot towards their village.

16. The evidence of Krishna is supported by P.W.6 Tukaram. He has also stated that on that day he was present alongwith accused, deceased and other witnesses and as there was shortage of money, in order to find out whether accused was having money

he had put his hand in the pocket of Vithal's chatan and at that time he noticed that there was knife in his pocket. The eye witness Laxman Gawade Exhibit 24 has also supported this evidence. It is pertinent to note that witness Krishna Gawade and Tukaram Gawade have in fact not stated anything about the main incident of assault, but they have only deposed as to what was seen by them and whatever had happened in their presence. An attempt was made on behalf of the defence to show that there are certain contradictions and discrepancies in their evidence. However, it is pertinent to note that the said discrepancies in evidence are only in respect of the sequence in which the above witnesses met each other or whether they had told police about the details for which they had gone to the market etc. The said discrepancies and contradictions are not at all in respect of the main incident. So, there is absolutely no reason to disbelieve their testimony to hold that on that day in the evening the accused was having a knife in his pocket. If really the above mentioned two witnesses had any grudge or grievance against the accused, or they had the intention to rope the accused falsely then they would have stated about the alleged assault also,

but that has not happened. So, this also suggests that they are truthful witnesses.

17. The prosecution is mainly relying on the testimony of the eye witness P.W.8 Laxman Gawade, Exhibit 24. Admittedly he was known to all the prosecution witnesses as well as to the deceased and accused. The said witness has stated that on 23.1.1987 he had also gone to the market and in the evening he had met the accused, deceased and the other prosecution witnesses. Not only that, but he has also stated that when the deceased, accused Vithu, P.W.5 Krishna and P.W.6 Tukaram had gone for consuming liquor on second occasion he had accompanied them. He has also stated that when there was question of payment of bill, P.W.6 Tukaram had put his hand in the pocket of the chatan of the accused and he had noticed that there was knife in his pocket and he had also told this to all of them who were present there. The said witness has also stated that at the relevant time the deceased, accused and other witnesses consumed liquor, but he had not consumed liquor. He has also supported the statement of Tukaram and Krishna regarding the return of all those witneses to S.T.Stand and then

proceeding to village. He has further stated that when he, deceased and accused were proceeding towards the village, deceased Ranga uttered abusive words in Kanadi language by saying "Noun Hadaly" (its a filthy abuse on mother). As a result of the above utterance the accused Vithu got annoyed and he held the collar of the shirt of deceased Ranga and asked him as to why he abused. Then, accused Vithu took out knife from his pocket and started giving blows on the body of Ranga. He also gave blow on stomach. Ranga tried to tell Vithu not to assault and said "I am Ranga, you should not harm me". As a result of the said assault Laxman got afraid and started running away from the said place. However, the accused chased him and gave threat to him that if he would disclose about the incident to anyone he would kill him. On so saying the accused left the road and went away through the field. He has further stated that he then returned home. Shri J.D.Mane, learned advocate for the accused submitted that there are several contradictions in the testimony of this eye witness. There are certain omissions and it is clear that this witness has made different statement than the statement given by him before the police. During cross examination of this

witness, it has been brought on record that in the witness box he has said that he and his mother had gone to Mandrup market, while in the police statement he had stated that his mother had already gone to market prior to him. Similarly, he has stated in his deposition that when he went to S.T. stand in the evening, Krishna, Rangnath, Nagnath and Vishnu were sitting at the S.T. Stand. However in the police statement he has stated that Krishna and Rangnath were at the S.T.Stand and Tukaram came there afterwards. In deposition he has said that Namdeo and Nagnath came to the S.T.Stand after arrival of Tukaram, but in police statement he has stated that Namdeo and Nagnath came with Vithal and Tukaram. Similarly, in deposition he has said that he alone had waited at the S.T. stand when others proceeded to liquor shop for the first time while in the statement before the police he has stated that he and Namdeo had waited there. Thus, we find that the learned Advocate for the defence has brought on record several such omissions and contradictions. He has been cross examined thoroughly at great length. However, it must be noted that whatever omissions and contradictions have been brought on record are not at all pertaining to the main

incident of assault. In fact these omissions and contradictions have absolutely no bearing on the incident in question. Nor these omissions and contradictions go to the root of the matter. In any case, the same are not of such nature which would indicate that the witness is not truthful and reliable witness. Nor the said statements any way indicate that by making such different statements any particular side was likely to be benefited. So, those omissions and contradictions are very minor and insignificant. In fact, it is well settled that where the omissions are vital, they merit consideration, but mere small omissions are not sufficient to hold that the witness is not at all trustworthy. On the contrary it is well settled that the minor variations in the account of the witensses are often the hallmark of the truth of their testimony.

18. It is pertinent to note that it is nowhere even suggested to this witness that at the relevant time he was not at the place of offence or that the accused was not present there. The said witness has categorically stated that after the utterance of the abusive words by the deceased there was some

exchange of words and immediately the accused gave blows with knife to deceased. Not only that, but, he he has also state that at the relevant time accused gave threat to him. It is pertinent to note that this material evidence of the eye witness is not at all shaken or shattered in the cross examination. A feeble attempt has been made to show by relying on one stray admission of this witness that this witness had in fact not seen the entire incident and at the most he might have seen accused giving one blow with knife on the stomach of the deceased because in cross examination this witness has stated "I got afraid and ran away immediately after Vithu dealt knife blow over stomach of Rangnath". Firstly, it must be noted that by these words it cannot be said that the witness wanted to communicate that the first blow was given on the stomach or that he had not seen the accused while giving blows on the other parts of the body of the deceased. It is needless to say that while assessing the evidence of any witness one has to take into consideration the entire evidence as such and one can not read stray sentence here and there. When we find that the witness has categorically stated that after the accused took the knife out of

his pocket he started giving blows with it to the deceased, it obviously means that the accused gave several blows. In fact this has been corroborated by the medical evidence because the doctor found as many as 19 injuries on the dead body and most of the said injuries were incise wounds or stab wounds. So, the version of Laxman is also corroborated by the medical evidence.

20. Much is made about the fact that Laxman did not raise any shout for help, nor he himself went to Rangnath to save him. However, it must be noted that after seeing the accused giving such blows with knife to Rangnath, witness Laxman must have got scared. In fact he has stated accordingly. As a result of the same he ran away from the said place. There was absolutely nothing abnormal in such conduct of the said witness. Then it must also be noted that merely because this witness subsequently did not disclose about the incident to any other person till the next day, we can’t jump to the conclusion that the witness was not present at the time of the incident. It must be noted that this witness was threatened by the accused. So, naturally, he must not have spoken about the

incident to anyone. Besides this there must be apprehension in his mind that as at the relevant time he was also at the place of offence, if he discloses his presence at the place of offence, then it may happen that the police may also book him on suspicion. In fact, we do find that during investigation when it transpired that this witness was present, he was called at the police station. Not only that but police had practically detained him in the police station till the time the accused was traced. So, merely because this witness did not help the deceased or did not disclose about the incident to anyone else till the next day or he did not go to the house of Rangnath on the next day, one certainly can't jump to the conclusion that such conduct of the witness was abnormal and was sufficient to indicate that he is not trustworthy witness. Human conduct and behaviour is most unpredictable thing. Different persons may react in different way in one and the same situation. So, merely because a particular witness has not reacted in a particular manner, one can't label him that he is not a reliable witness. Particularly, when the conduct of the said witness cannot be said to be totally unnatural or abnormal. Shri J.D.Mane,

learned advocate for the accused has placed reliance on a case **State of Maharashtra vs.Bhanodas Sangolkar 1997 ALL MR (Cri) 807** to show that if the witness had not disclosed the incident to others in short time then the evidence of such witness cannot be relied upon. However, the facts of the said case and the facts of the case in hand are quite different. In that case the witness had stated that he had seen the accused killing two persons but he did not disclose this to police on the next day of the arrival of the police in the village, but disclosed the incident to police on the 5th day. Here, on the contrary we find that the witness did not disclose the incident to family members or to other but when he was called in the police station he disclosed the incident to police immediately i.e. on the next day. So, the facts of the facts of the said case and the facts of the case in hand are quite different. In the present case the explanation given by the witness for not helping the deceased or not going to the house of the deceased is quite justifiable. The learned advocate for defence has also drawn our attention to a case **State of Orissa vs. Brahmanand Nanda AIR 1976 SC 2488** wherein the solitary eye witness had not disclosed

the name of the assailant for a day and half after the incident and explanation offered for non disclosure was unbelievable. So, under such peculiar circumstances it was held by the Apex Court that High Court rightly rejected the evidence of said witness. While in the instant case, the explanation given by the witness for not disclosing the incident for one day is certainly justifiable, acceptable and believable. In fact the learned trial Judge, in the circumstances of the case has specifically held that the said conduct of the witness Laxman is not sufficient to discredit his testimony. In fact, the learned trial judge who had an opportunity to see and mark the demeanour of this witness while he was in the witness box has also specifically stated that the evidence of this witness appeared to him quite logical and reliable. To us also the entire evidence of this witness appears to be quite trustworthy. His evidence is certainly not shaken or shattered in the cross examination. A feeble attempt is made to show that the grand father of the accused and this witness are having some dispute on account of boundary. However, the said suggestion is categorically denied by this witness. Mere suggestion can’t take place

of proof. There is not even slightest material on record to show that this witness is cultivating any agricultural land and it is adjacent to the land of the accused and there was any dispute as tried to be suggested on behalf of the accused. So, it is crystal clear that Laxman Gawade is certainly an independent witness who was present at the place of offence. His presence is also not disputed and the evidence given by him is sufficient to hold that at the relevant time the accused assaulted deceased with knife and thereby caused his death.

21. The direct evidence of witness Laxman is also corroborated by the other circumstantial evidence. It has also come on record that since the time of incident the accused was absconding. The police, after coming to know the name of the accused tried to search for him for about four days in the village, however, he was not traced and on 27.1.1987 police received the copy of the application filed by the accused for anticipatory bail. The said application was rejected and then accused was arrested on 5.2.1987. Thus, we find that absconding of accused after the incident is a circumstance which also lends supports to the prosecution case.

It is true that absconding by itself cannot be said to be sufficient or relevant to convict the accused if there is no other evidence, however, when the direct evidence is cogent, reliable and sufficient to prove his guilt and there is also evidence with regard to absconding of the accused then certainly it assumes importance. So, this is another factor which supports the prosecution case.

22. It is the prosecution case that on 7.2.1987 when the accused No.1 was in police custody he made a statement before the police in presence of panchas that he would produce the knife concealed by him and accordingly police recorded his statement and then the accused led police and panchas to his house and there he produced one knife by taking it out from the heap of fodder and police attached the same under panchanama. The two panchas examined by the prosecution in this behalf have unfortunately turned hostile. However, that does not mean that the case of the prosecution in this behalf should be totally rejected. It does appear that the investigating officer has categorically stated about this discovery. His evidence in this behalf is not at all shaken or shattered in the cross examination nor

there is anything to suggest that this police officer had any animus against the present accused or that he wanted to favour the real culprit and as such he tried to implicate the present accused. It is very clear that in the official course of his duty the police officer had carried out the investigation and the knife in question has been discovered. There is no reason to disbelieve the evidence of the Investigating Officer in this behalf. So, we are inclined to hold that the knife in question has been discovered at the instance of the accused. It has also come on record that this knife was sent to C.A. and the C.A. report is filed at Exhibit 39. From the perusal of the same it appears that the blood of "B" group, which was the blood group of the deceased was found on the said knife. No explanation is given by the accused regarding the same. The C.A. report shows that the blood of the accused is of "A" group. So, under such circumstances, this is another very clinching evidence which connects the accused with the alleged crime.

22. There is also evidence to show that the clothes of the accused which were on his person at

the time of the incident were produced by him and police attached the same under panchanama and blood of "B" group was also found on the said clothes. However, there is nothing on record to show that these clothes were discovered at the instance of the accused. So, under such circumstances no much importance can be attached to this evidence. However, merely because this evidence is not sufficient or cannot be accepted, we can not ignore the other cogent and convincing evidence adduced by the prosecution.

23. It was vehemently argued on behalf of the defence that in the instant case prosecution has not proved the motive. However, it is well settled that when the positive evidence against the accused is clear, cogent and reliable the question of motive is of no importance. It has been so held in Gurucharansingh vs. State of Punjab AIR 1956 SC 460. So, merely because prosecution has not proved the motive that will not change the fate of this case.

24. In view of the above discussion, we have no hesitation to hold that the evidence on record is

sufficient to prove beyond reasonable doubt that the accused gave knife blows to the deceased. Merely because some time prior to the incident the accused had consumed liquor and the deceased had uttered some abusive language and then the accused immediately gave knife blows it cannot be said that the accused has not committed any offence of murder. It is pertinent to note that in the instant case the accused has not given only one blow of knife but he has dealt several blows with knife and that too on the vital parts of the body of Rangnath. Even the doctor has also stated that the injury Nos.11,13 and 19 are sufficient in the ordinary course of nature to cause death. He has also stated that incised wounds on the person of deceased are possible with kinfe, in the court. So, having regard to all these facts and circumstances and considering the number of blows given with knife on the vital part of the deceased the learned trial Judge has rightly held that the accused had an intention of causing such bodily injury or injuries as he knew to be likely to cause death of Rangnath. The learned trial Judge has considered the entire evidence in his proper perspective and has rightly held that the accused has committed the offence punishable under Section

302 of I.P.C. There is no necessity to interfere with the said finding. Hence, we pass the following order:

ORDER

1. The appeal is dismissed.

2. The order of conviction and sentence passed by the 4th Additional Sessions Judge, Solapur in Sessions Case No.109 of 1987 is confirmed.

3. The accused to surrender bail within eight weeks from today, failing which the trial court to take necessary steps to arrest the accused and sent him to jail to undergo the sentence.

(D.G.Deshpande, J.)

(S.R.Sathe, J.)